

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JACKSON PURCHASE ELECTRIC COOPERATIVE	)	
CORPORATION, INC.	)	
	)	
_____	)	CASE NO. 94-013
	)	
ALLEGED VIOLATION OF COMMISSION	)	
REGULATIONS 807 KAR 5:006 AND 807 KAR	)	
5:041	)	

O R D E R

Jackson Purchase Electric Cooperative Corporation ("Jackson Purchase") has applied for rehearing on the Order of May 9, 1995 in which the Commission assessed a penalty of \$4,000 against it. Jackson Purchase argues that the Commission's finding of a willful violation of 807 KAR 5:006, Section 24, is not supported by the evidence of record. Finding no merit in its argument, we deny.

On August 16, 1993, Jackson Purchase employee Gregory Conyers was fatally injured while setting a new utility pole in Paducah, Kentucky. Fellow employee John A. Martin was also injured. At the time of the incident, no member of the Jackson Purchase work crew was wearing protective clothing or using protective equipment. Although the derrick truck which the work crew was using had not been bonded to an effective ground, none of the work crew considered the truck as energized. Such conduct is contrary to National Electrical Safety Code ("NESC") Sections 422A2 and 420C5 and Jackson Purchase Safety Rules 519d and 520.

Commission Staff investigated the incident. In its report on the incident, it found that Jackson Purchase employees had violated several NESC provisions and several provisions of Jackson Purchase's safety rules. It further found that Jackson Purchase had violated Commission Regulation 807 KAR 5:041, Section 3, which requires an electric utility to operate and maintain its facilities in accordance with NESC standards. Commission Staff also found that, as Jackson Purchase supervisory officials were present at the work site and failed to enforce NESC and utility safety rules, it also failed to comply with 807 KAR 5:006, Section 24, which requires an electric utility to adopt and execute a safety program.

Based upon the report's findings, the Commission initiated show cause proceedings against Jackson Purchase. Commission Staff and Jackson Purchase stipulated the facts. Jackson Purchase also submitted a written brief.

In our Order of May 9, 1995, we found that Jackson Purchase had willfully failed to execute its safety program and, therefore, violated 807 KAR 5:006, Section 24. We further found that willful violations of 807 KAR 5:041, Section 3, had occurred. Accordingly, a penalty of \$4,000 was assessed.

In its application for rehearing, Jackson Purchase focuses solely on the Commission's finding of a willful failure to execute a safety program. Jackson Purchase notes that: (1) It has adopted a safety program in compliance with Commission regulations. (2) Prior to the incident, the employees in question participated in this program. (3) The employees in question were familiar with

NESC and Jackson Purchase safety rules and the consequences of failure. It argues that these employees' failure to follow safety rules does not support the finding that Jackson Purchase willfully failed to execute its safety program and that, therefore, the assessed penalty should be reduced.

The only issue presented is whether Jackson Purchase willfully failed to execute its safety program. "Execute" is defined as follows:

To complete; to make; to sign; to perform; to do; to follow out; to carry out according to its terms; to fulfill the command or purpose of. To perform all necessary formalities, as to make and sign a contract, or sign and deliver a note.

Black's Law Dictionary 509 (5th ed. 1979) (emphasis added).

Under this definition, a utility is required to do more than establish safety rules and instruct its employees in the safe methods of performing their work. The utility must also enforce the safety rules which it has established. Otherwise, a safety program serves no purpose. In this instance, the Jackson Purchase foreman - the utility's representative at the incident site - willfully failed to enforce the utility's own safety rules.

Jackson Purchase seeks to disassociate itself from its foreman's conduct. The Commission has in prior cases rejected such arguments. In Case No. 10094, Jackson County Rural Electric Cooperative Corporation,<sup>1</sup> we declared:

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<sup>1</sup> Case No. 10094, Jackson County Rural Electric Cooperative Corporation, (slip op.) (Oct. 24, 1988).

A utility employee's failure to comply with a Commission Order or regulation may have disastrous results -- property may be damaged, persons injured or killed. Whether an employee's act is intentional or negligent, its results are the same. The Commission believes that a utility by placing a person in a position of responsibility is under an obligation to ensure that person properly discharges the duties of that position. By penalizing a utility for its employees' acts, the Commission prompts the utility to see that the corporate business is conducted so as not to injure others or infringe upon the public good. As a utility has extensive control over its employees -- it selects, trains, and supervises them, it is in the best position to take responsibility for them.<sup>2</sup>

Acceptance of Jackson Purchase's argument logically leads to absolving a utility from any responsibility for the enforcement of its safety rules. A utility is not flesh and blood. It can only enforce its safety rules through its supervisory employees. If these employees willfully fail to enforce those rules and the utility is not held accountable for these failures, then utility safety programs become nothing more than exercises in paperwork. The Commission finds such result to be inconsistent with the purpose and intent of Commission Regulation 807 KAR 5:006, Section 24, and with the provision of safe utility service.

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<sup>2</sup> Id. at 7 (citations omitted).

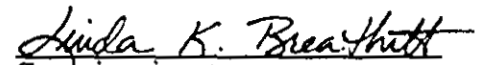
IT IS HEREBY ORDERED that Jackson Purchase's Application for Rehearing is denied.

Done at Frankfort, Kentucky, this 19th day of June, 1995.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director